

Living Wills and the Durable Power of Attorney for Health Care

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Kansas statutes make two legal documents available to you to make sure your wishes are followed. One is known as a Living Will or natural death act declaration. The second is the Durable Power of Attorney for Health Care decisions or Health Care Power of Attorney.

What is a *Living Will*?

A statutory living will is a written statement of your wishes regarding your medical treatment if you are in a terminal condition. It is only effective if two physicians have determined you are terminally ill.

What is a *Durable Power of Attorney for Health Care*?

A durable power of attorney for health care decisions is a written document in which you authorize someone who you name (your "agent" or "attorney-in-fact") to make health care decisions for you in the event you are unable to speak for yourself. Health care decisions include the power to consent, refuse consent or withdraw consent to any type of medical care, treatment, service or procedure. In the document you can give specific instructions regarding your health care which will require the agent to make decisions in accordance with your direction.

What is the difference between a *Power of Attorney for Health Care* and a *Living Will*?

Power of attorney can cover all medical decisions:

Statutory living wills only apply to decisions regarding "life-sustaining treatment" in the event of a "terminal illness." A terminal illness does not include Alzheimer's Disease, dementia or coma. A durable health care power of attorney can be effective any time or, if you want, at any time you are unable to make or communicate a decision. The agent you appoint can make any decision you direct, including decisions about health care beyond those covered by your living will. For example, the agent under a durable power of attorney can make decisions about care if you are in a persistent vegetative state, but are not terminally ill.

Power of attorney appoints an agent:

Through a durable power of attorney, you appoint someone to act on your behalf. That person can weigh the pros and cons of treatment decisions in accordance with your directions. Unless you limit the powers, the agent can hire physicians and other health care providers, decide where you will receive treatment, and make decisions about the full range of medical decisions from routine care to decisions about life-sustaining treatment.

Do I lose control by appointing an agent?

You can write your living will and your durable power of attorney to include specific limitations about anything you want to have done or want to avoid having done. You can express your wishes about whatever you care most about. You can terminate your health care power of attorney at any time by notifying your agent and health care provider. You can terminate the power of attorney verbally but it is best to do so in writing and to destroy the original document.

Why do I need a *Living Will or Health Care Power of Attorney*?

Without these documents, your wishes may not be followed. In some situations a guardian may be limited in making some decisions, especially those regarding life-sustaining treatment when you are in a vegetative state but not terminally ill. In addition, the guardian appointed by the court may have no idea what your wishes are. The existence of the document can relieve some of the stress or conflict that otherwise might arise if family or friends have to decide on their own what you would want done when you cannot speak for yourself.

Do I need both the *Living Will* and the *Durable Power of Attorney for Health Care*?

It is recommended you have both documents. The living will provides clear evidence of your wishes concerning medical care and treatment and will help ensure that the agent and physicians carry out your wishes. The durable power of attorney for health care gives your agent the authority to take action on your behalf and to carry out your directions for health care, without the delays of court proceedings.

Once I have the documents what do I do?

Even as you draft the documents you should talk about your values and wishes with your physician(s), anyone you will appoint as an agent or alternate agent, and those who are close to you. You should give a copy of the documents to all of your physicians, your agent under the durable power of attorney, and your family or friends. **If you retain the originals tell someone where the papers can be found. Place the originals in a secure place where someone can access without court intervention. Remember, a Living Will and Durable Power of Attorney for Health Care Decisions provide you a way to maintain control of your health care.**

NOTE: All information provided by the Kansas Bar Association as accessed on 9 Jan 2013.
<http://ksbar.org/displaycommon.cfm?an=1&subarticlenbr=65>